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Paper No. 4

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OFFICE OF PETITIONS

In re Application of	:	
Dwight L. Adamic et al	:	DECISION DISMISSING
Application No. 09/882,825	:	PETITION
Filed: June 16, 2001	:	
Attorney Docket No. 0247.00006	:	

This is a decision on the paper styled "Request For Corrected Filing Receipt" filed September 14, 2001, requesting that the above-identified application be accorded a filing date of June 15, 2001, rather than the presently accorded filing date of June 16, 2001. The petition is properly treated as a petition under 37 CFR 1.10(d).

Applicants request the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on June 15, 2001, pursuant to the requirements of 37 CFR 1.10. Applicants acknowledge that the date of deposit in Express Mail shown on applicants' Express Mail receipt is June 16, 2001, but argue that the application was actually deposited with the United States Postal Service (USPS) as Express Mail on June 15, 2001.

Paragraph (a) of 37 CFR 1.10 states that:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See §1.6(a). (Emphasis supplied)

Paragraph (d) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
- (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in 'Express Mail Post Office to Addressee' service prior to the last scheduled pickup for that day." In addition, the showing "must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS." Evidence from the USPS may be the Express Mail Corporate Account Mailing Statement. Evidence that came into being within one day after the deposit of the correspondence as Express Mail may be in the form of a log book which contains information such the place, date and time of deposit; the time of the last scheduled pick-up for that date and place of deposit; the depositor's initials or signature; and the date and time of entry in the log.

The petition fails to include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the 'Express Mail Post Office to Addressee' service prior to the last scheduled pickup for that day" as required by 37 CFR 1.10(d). Accordingly, the petition is dismissed.

Applicants attention is directed to 37 CFR 1.10(d), which states, in part, that:

Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked.

It is unfortunate that applicants chose to deposit a paper as important as a patent application in Express Mail without immediately obtaining an Express Mail receipt showing the desired date of deposit.

Any request for reconsideration of this decision should be filed within **TWO MONTHS** of the date of this decision in order to be considered timely (see 37 CFR 1.181(f)) and should be addressed as follows:


By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

The application is being returned to Technology Center AU 3671 with the presently accorded filing date of June 16, 2001.

Telephone inquiries specific to this matter should be directed to Wan Laymon at (703) 306-5685.



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for Patent Examination Policy